

**IN THE SUPREME COURT OF MICHIGAN**  
Appeal from the Michigan Court of Appeals  
Meter, P.J., and Talbot and Borrello, JJ.

JOHANNA WOODARD, Individually and as  
Next Friend of AUSTIN D. WOODARD,  
a Minor, and STEVEN WOODARD,  
Plaintiffs-Appellees  
and Cross-Appellants

Supreme Court No. 124994

(COA: No. 239868)

v.

JOSEPH R. CUSTER, M.D.,  
Defendant-Appellant  
and Cross-Appellee

and

MICHAEL K. LIPSCOMB, M.D.,  
MICHELLE M. NYPAVER, M.D., and  
MONA M. RISKALLA, M.D.,  
Defendants.

CONSOLIDATED WITH

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JOHANNA WOODARD, Individually and as  
Next Friend of AUSTIN D. WOODARD,  
a Minor, and STEVEN WOODARD,  
Plaintiffs-Appellees,  
and Cross-Appellants

Supreme Court No. 124995

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v.

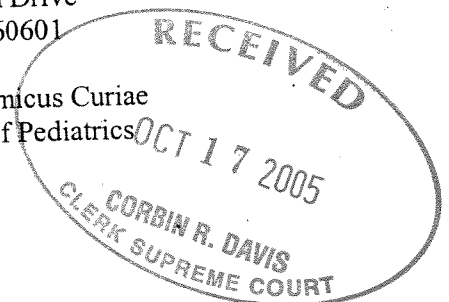
UNIVERSITY OF MICHIGAN MEDICAL  
CENTER,  
Defendant-Appellant  
and Cross Appellee

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**BRIEF OF AMICUS CURIAE AMERICAN BOARD OF PEDIATRICS  
IN SUPPORT OF DEFENDANTS-APPELLANTS AND CROSS-APPELLEES**

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## **STATEMENT OF QUESTIONS PRESENTED**

1. What are the appropriate definitions of the terms “specialty” and “board certified” as used in MCL § 600.2169(1)(a)?
2. Whether either “specialty” or “board certified” includes subspecialties or certificates of special qualification?
3. Whether MCL § 600.2169 requires an expert witness to match all specialties, subspecialties, and certificates of special qualifications that a defendant may possess, or whether the expert witness need only match those that are relevant to the alleged act of malpractice?

## **STATEMENT OF FACTS AND INTEREST OF AMICUS CURIAE**

The American Board of Pediatrics (“ABP”) is not a party to the instant matter, and therefore offers no statement of facts regarding the facts involved or its procedural posture. Instead, the ABP offers this statement of interest to aid the Court in understanding its position and interest in this matter.

The ABP is one of the 24 certifying boards of the American Board of Medical Specialties (ABMS). *See* Stockman Affidavit, attached at **Tab 1**, ¶3; Miller Affidavit, attached at **Tab 2**, ¶4). The ABP is an independent, nonprofit organization whose certificate is recognized throughout the world as a credential signifying a high level of physician competence. Tab 1 at ¶ 3. The ABP strives to improve training, establishes the requirements for certification, and sets the standards for its examinations. *Id* at ¶4. Certification by the ABP has one objective -- to promote excellence in medical care for children and adolescents. *Id* at ¶5. Certification represents dedication to the highest level of professionalism in patient care. *Id*. ABP certification provides a standard of excellence by which the public can select pediatricians and pediatric subspecialists. *Id*. Although ABP certification is voluntary, nearly all qualified pediatricians seek this recognition. *Id*. The ABP awards separate certificates in General Pediatrics and also in the following separate and distinct subspecialty areas: Adolescent Medicine, Cardiology, Critical Care Medicine, Developmental-Behavioral Pediatrics, Emergency Medicine, Endocrinology, Gastroenterology, Hematology-Oncology, Infectious Diseases, Neonatal-Perinatal Medicine, Nephrology, Pulmonology, and Rheumatology. Certificates are awarded in conjunction with other specialty boards in the areas of Clinical Laboratory Immunology, Medical Toxicology, Neurodevelopmental Disabilities, and Sports Medicine. *Id* at ¶6.

Pediatricians practice the specialty of medical science concerned with the physical, emotional, and social health of children from birth to young adulthood. *Id* at ¶7. Pediatric care encompasses a broad spectrum of health services ranging from preventive health care to the diagnosis and treatment of acute and chronic diseases. ***Id.*** Pediatricians understand the many factors that affect the growth and development of children. *Id.* They understand that children are not simply small adults. *Id.* Children change rapidly, and they must be approached with an appreciation for their stage of physical and mental development. *Id.* Pediatricians are therefore primarily concerned with the health, welfare, and development of children and adolescents; they are uniquely qualified to provide care for children because of their specialized training and concern for their well-being. *Id.* Pediatricians achieve their competency through training, experience, and continuing education. *Id.*

Some pediatricians choose to focus their practice in one area of pediatrics; these physicians may pursue additional training in a subspecialty. *Id* at ¶8. For example, pediatric cardiologists are pediatricians who specialize in diseases of the heart in children. *Id.* While a physician need not be certified in a particular subspecialty in order to practice in that area, physicians who tend to focus their practice in a particular subspecialty and develop an expertise in that area often seek certification in that subspecialty. *Id.* Certification in a subspecialty therefore connotes the achievement of a certain level of expertise and experience in that subspecialty. *Id.*

The American Board of Pediatrics (“ABP”) certifies pediatricians in both General Pediatrics and in many distinct specialties within pediatrics. While the latter are sometimes referred to as “subspecialties,” such a designation does not imply that certification in these specialties is any less valid than certification in General Pediatrics. Indeed, the ABP’s

recognition of these subspecialties serves as validation that they are distinct, important areas of specialization in which physicians must demonstrate compliance with rigorous training and standards in order to be certified. *Id.* ¶8.

Consistent with its purposes, the ABP has a strong interest in promoting the recognition of each of its sub-specialties as distinct and unique areas in which pediatricians receive specialized and extensive training and undergo rigorous testing in order to become certified. *Id.* at ¶10. Where, as here, a testifying expert is required by law to have the same relevant board certification as the party or expert against whom he is testifying, this requirement should encompass board certification in relevant sub-specialties as well. *Id.* at ¶13. *See also* Tab 2 at ¶10.

### **SUMMARY OF ARGUMENT**

First, the definitions of “board certified” and “specialty” as used in MCL § 600.2169(1)(a) should be based on the meanings given to them by the boards who are charged with the responsibility of certifying physicians. In the case of pediatrics, the American Board of Pediatrics grants certificates to pediatricians in both General Pediatrics and a number of specialties within General Pediatrics. The term “board certified” applies equally to those physicians certified in General Pediatrics and those who attain certification in one of the ABP’s recognized “subspecialties.” Therefore, “board certified” and “specialty” as used in MCL § 600.2169(1)(a) should include certification in General Pediatrics as well as certification in any one of the ABP’s recognized subspecialties.

Second, based on the same reasoning, the terms “specialty” and “board certified” should most certainly include subspecialties, also referred to as certificates of special qualification.

Third, MCL § 600.2169 does not require an expert witness to match all specialties, subspecialties, and certificates of special qualifications that a defendant may possess. A plain



reading of the statute requires an expert witness to match only the specialty -- which by definition may consist of a so-called “subspecialty” -- in which the defendant was engaged at the time of the alleged malpractice.

### **ARGUMENT**

Under MCL § 600.2169, if a party or physician against whom an expert is testifying is board certified in the specialty that was being practiced at the time of the claimed malpractice, the expert must also be board certified in that specialty. As the Board responsible for certifying pediatricians, the ABP strongly urges this Court to accept the ABP’s definition of “board certified,” which necessarily encompasses certification by the ABP in both General Pediatrics and separately in the various subspecialties with General Pediatrics. Consistent with that definition, the term “specialty” as used in MCL § 600.2169 should include “subspecialties” as well.

#### **I. The Definitions of “Specialty” and “Board Certified” Under MCL § 600.2169 Should Be Given Their Plain Meaning As Used By ABMS Certifying Boards**

The American Board of Pediatrics (ABP) is one of the 24 certifying boards of the American Board of Medical Specialties (ABMS). **Tab 1 ¶3; b¶4.** The ABP determines whether a pediatrician is “board certified.” **Tab 1 ¶4.** Specifically, physicians who are awarded certificates by the ABP in General Pediatrics and any of its subspecialties are considered to be “board certified” in those areas. *Id.* From the ABP’s perspective, therefore, “board certification” includes initial specialty and subspecialty certification. *Id.* The ABP awards separate certificates in General Pediatrics and in the following subspecialty areas: Adolescent Medicine, Cardiology, Critical Care Medicine, Developmental-Behavioral Pediatrics, Emergency Medicine, Endocrinology, Gastroenterology, Hematology-Oncology, Infectious Diseases, Neonatal-Perinatal Medicine, Nephrology, Pulmonology, and Rheumatology. Certificates are awarded in

conjunction with other specialty boards in the areas of Clinical Laboratory Immunology, Medical Toxicology, Neurodevelopmental Disabilities, and Sports Medicine. *Id* at ¶6.

The purpose of certification by the ABP is to provide assurance to the public and the medical profession that a certified pediatrician has successfully completed an accredited educational program and an evaluation, including an examination, and possesses the knowledge, skills and experience requisite to the provision of high quality care in pediatrics or a subspecialty thereof. *Id* at ¶9. Certification in a so-called “subspecialty” area is equally as valid as certification in General Pediatrics. (*Id.*) Indeed, the fact that the ABP recognizes these subspecialties as separate areas of pediatric medicine demonstrates the broad nature of the area of General Pediatrics and the need to recognize those physicians who attain a certain level of expertise and experience within a particular pediatric area.

Pediatricians practice the specialty of medical science concerned with the physical, emotional, and social health of children from birth to young adulthood. *Id* at ¶7. Pediatric care encompasses a broad spectrum of health services ranging from preventive health care to the diagnosis and treatment of acute and chronic diseases. *Id.* Although pediatricians understand that children are not simply small adults, nearly all of the medical specialties that categorize physicians that treat adults apply equally to pediatricians. *Id* at ¶10. As a result, the ABP has recognized certain distinct specialties within pediatrics in which pediatricians may become certified. *Id.* For example, physicians who are certified in the pediatric specialty of Pulmonology specialize in the diagnosis and treatment of lung disease in children. Physicians who are certified in the pediatric specialty of Critical Care Medicine specialize in the treatment of critically ill children whose conditions require very intensive medical treatment. *Id.* Although

these specialties are generally referred to as “subspecialties,” all are considered to be “specialties” by the ABP. *Id* at ¶11.

## **II. Physicians May Be “Board Certified” In Subspecialties Just As They May Be Certified In General Pediatrics**

For purposes of MCL § 600.2169, certification in the “specialty” of General Pediatrics does not connote the same level of specialization in specific ABP “subspecialty” areas as those who have been certified by ABP in a specific subspecialty. *Id* at ¶13. Just as the ABP has set specific and rigorous standards for certification in General Pediatrics, ABP has established specific and rigorous standards for certification in each of the so-called “subspecialty” areas, and has determined that each of these areas is distinct enough to merit special recognition of those with a particular expertise and experience level in those areas. *Id* at ¶11.

The ABP does not determine whether physicians may practice in any particular specialty or subspecialty area, nor does the ABP mandate who may be qualified as an “expert” for litigation or any other purpose. *Id.* at ¶12. The ABP does, however, determine who may be “board certified” in General Pediatrics and the other previously identified areas of pediatric specialization. *Id.* To the extent, therefore, that MCL § 600.2169(1)(b) requires an expert witness to be “board certified” in the same specialty as the physician against whom he seeks to testify, such board certification necessarily must include certification in any relevant “subspecialty” area. *Id.* At ¶13.

Put simply, plaintiffs’ argument that the term “specialty” used in the statute must be interpreted as narrowly as possible to include only “general” specialties is misguided and does not aid their case. As explained above, board certification in the “specialty” of General Pediatrics does not connote the same level of specialization in the specific pediatric specialties recognized by the ABP and referred to as “subspecialties.” By way of illustration, physicians

seeking certification in the pediatric specialty of Pulmonology must demonstrate that they have received extensive training and have achieved a high level of expertise in the diagnosis and treatment of lung disease in children. Physicians seeking to become certified in the pediatric specialty of Critical Care Medicine must show that their training and expertise in the treatment of critically ill children whose conditions require very intensive medical treatment meet the rigorous standards set by the ABP. In each case, certification represents the achievement of a certain level of expertise and experience in the separate and distinct area or areas of specialty at issue, above and beyond that required of those certified in General Pediatrics.

Similarly, the American Board of Medical Specialties<sup>1</sup> (“ABMS”) has recognized that although physicians need not be certified in a subspecialty in order to practice medicine in that particular subspecialty, certification in a subspecialty connotes a particular expertise and degree of experience in the subspecialty area:

Specialty certification in a subspecialty field is of significance for physicians preparing for careers in teaching, research, or practice restricted to that field. Such special certification is a recognition of exceptional expertise and experience and has not been created to justify a differential fee schedule or to confer other professional advantages over other diplomates not so certified.

*(The Significance of Certification in Medical Specialties: A Policy Statement, Adopted by the ABMS Assembly 9/18/75; Revised 9/23/93). See also Tab 2, ¶8.*

Thus, while ABMS has no policy regarding the qualifications required of physicians who seek to testify as experts in litigation, the ABMS has recognized that certification in a subspecialty connotes a certain level of expertise and experience beyond that required of

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<sup>1</sup> The ABMS is a not-for-profit organization comprising 24 medical specialty boards. Established in 1933, the ABMS serves to coordinate the activities of its Member Boards and to provide information to the public, the government, the profession and its Members concerning issues involving specialization and certification in medicine. The mission of the ABMS is to maintain and improve the quality of medical care in the United States by assisting the Member Boards in their efforts to develop and utilize professional and educational standards for the evaluation and certification of physician specialists. (Ex. 2 ¶3)

physicians with a more general certification. *Id.* Further, the ABMS recognizes that each of the member boards of ABMS -- including the ABP -- set rigorous requirements for certification in both “specialties” and “subspecialties,” all of which are reviewed and approved by ABMS. Put simply, subspecialties are not considered “lesser” areas of certification; rather, they are specialties in and of themselves for purposes of board certification. *Id.* at ¶9.

Requiring certification only in a more general “specialty” area where the specialty being practiced at the time of the claimed malpractice is actually a distinct “subspecialty” area would undermine the purposes of the statute. In *McDougall v Schanz*, 461 Mich 15; 597 NW2d 148 (1999), this Court observed that the Legislature, in enacting MCL § 600.2169, significantly stiffened the requirements regarding the qualifications of purported “experts” who would Monday morning quarterback the decisions of highly trained specialists. If a general practitioner were allowed to opine on the correct standard of care for a procedure that is clearly encompassed under a very distinct, specific subspecialty in which the physician who performed the procedure attained certification, MCL § 600.2169 would be rendered meaningless.

Consistent with the words and intent of MCL § 600.2169, claims against a physician that involve a particular specialty or subspecialty should be evaluated with the aid of an “expert” who has achieved the same level of expertise and experience in that particular specialty or subspecialty. Where a physician is certified in that particular specialty or subspecialty, MCL § 600.2169 requires the expert to be certified in that same specialty or subspecialty. There is simply no justification for excluding so-called subspecialties from this requirement.

### **III. MCL § 600.2169 Requires An Expert Witness To Be Board Certified In The Relevant Specialty Or Subspecialty In Which The Party Or Opposing Expert Is Certified**

The ABP supports the position of Defendants-Appellants that board certification is required in the same specialty or subspecialty that was being practiced at the time of the claimed

malpractice if the party or expert against whom the expert is testifying is board certified in that specialty or subspecialty. Certification in specialties or subspecialties that are not relevant to the issue involved in the malpractice claim at issue should not be considered when determining whether an expert is qualified under MCL § 600.2169. This is consistent with the purpose of the statute, which is to ensure that the expert witness testifying against the defendant has attained the same level of expertise as the defendant in the area of medicine that is at issue.

This position is consistent with case law, as well. In *Tate v Estate of Hall*, 249 Mich App 212; 642 NW2d 346 (2002), the Court of Appeals held that under MCL § 600.2169, a medical expert need not be certified under each and every specialty in which the physician against whom he is testifying is certified. After examining the plain meaning of the statute, the Court noted that the language of MCL § 600.2169 “cannot be read or interpreted to require an exact match of every board certification held by a defendant physician.” *Tate, supra*, 249 Mich App at 219. The Court went on to hold that “where a defendant has several board certifications and the alleged malpractice involves only one of these specialties, MCL § 600.2169 requires an expert witness to possess the same specialty as that engaged in by the defendant’s physician during the course of the alleged malpractice.” *Id* at 220.

Further, the decision in *Tate* confirms that the statute aims to ensure that the testifying expert can provide a **relevant** opinion regarding the standard of care applicable to the conduct of a defendant physician. Thus, the statute requires first that the Court determine what medical specialty was being practiced at the time of the alleged malpractice, and then, if the defendant physician is certified in that specialty, that the expert also be certified in that specialty. Because the ABP and other ABMS boards have recognized the need for, and the importance of, certification of physicians in certain separate and distinct subspecialties within their general

specialty areas, it is difficult to see how the term “board certified” in the statute could fail to include certification in subspecialties. If subspecialties were ignored for purposes of MCL § 600.2169, a physician who is board certified in the specific subspecialty at issue could be second-guessed by a physician who does not have the expertise and experience in that subspecialty. Certainly this result would not be consistent with the language -- or intent -- of the statute.

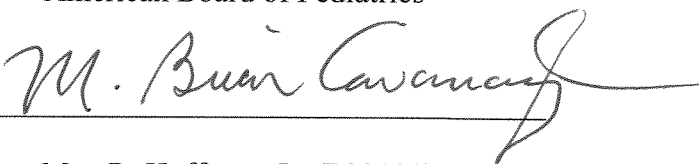
### **CONCLUSION**

For the all of the reasons set forth herein, the ABP respectfully supports Defendants-Appellants’ position that the word “specialty” as used in MCL § 600.2169 includes any subspecialty recognized by any of the 24 members of the ABMS in which a physician may seek certification.

Respectfully submitted,

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Dated: October 17, 2005

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**AFFIDAVIT OF JAMES A. STOCKMAN III, M.D.**

1. My name is Dr. James A. Stockman III. I am over twenty-one years of age and I have personal knowledge of the facts set forth herein.

2. I am the President of the American Board of Pediatrics ("ABP"), and have held that position for more than a decade.

3. The American Board of Pediatrics is one of the 24 certifying boards of the American Board of Medical Specialties (ABMS). Founded in 1933, the ABP is an independent, nonprofit organization whose certificate is recognized throughout the world as a credential signifying a high level of physician competence in pediatrics.

4. The ABP strives to improve training, establishes the requirements for certification, and sets the standards for its examinations. Therefore, it is the ABP that determines whether a pediatrician is “board certified.” Specifically, physicians who are awarded certificates by the ABP in General Pediatrics and any of its subspecialties are considered to be “board certified” in those areas. From the ABP’s perspective, “board certification” includes initial specialty and subspecialty certification.

5. Certification by the ABP has one objective -- to promote excellence in medical care for children and adolescents. Certification represents dedication to the highest level of professionalism in patient care. ABP certification provides a standard of excellence by which the public can select pediatricians and pediatric subspecialists. Although ABP certification is voluntary, nearly all qualified pediatricians seek this recognition.

6. The ABP awards separate certificates in General Pediatrics and in the following separate subspecialty areas: Adolescent Medicine, Cardiology, Critical Care Medicine, Developmental-Behavioral Pediatrics, Emergency Medicine, Endocrinology, Gastroenterology, Hematology-Oncology, Infectious Diseases, Neonatal-Perinatal Medicine, Nephrology, Pulmonology, and Rheumatology. Certificates are awarded in conjunction with other specialty boards in the areas of Clinical Laboratory Immunology, Medical Toxicology, Neurodevelopmental Disabilities, and Sports Medicine.

7. Pediatricians practice the specialty of medical science concerned with the physical, emotional, and social health of children from birth to young adulthood. Pediatric care encompasses a broad spectrum of health services ranging from preventive health care to the diagnosis and treatment of acute and chronic diseases. Pediatricians understand the many factors that affect the growth and development of children. They understand that children are not simply small adults. Children change rapidly, and they must be approached with an appreciation for their stage of physical and mental development. Pediatricians are therefore primarily concerned with the health, welfare, and development of children and adolescents; they are uniquely qualified to provide care for children because of their specialized training and concern for their well-being. Pediatricians achieve their competency through training, experience, and continuing education.

8. Some pediatricians choose to focus their practice in one area of pediatrics; these physicians may pursue additional training in a subspecialty. For example, pediatric cardiologists are pediatricians who specialize in diseases of the heart. While a physician need not be certified in a particular sub-specialty in order to practice in that area, physicians who tend to focus their practice in a particular subspecialty and develop an expertise in that area often seek certification in that subspecialty. Certification in a subspecialty therefore connotes the achievement of a certain level of expertise and experience in that subspecialty. The ABP's recognition of these subspecialties serves as validation that they are distinct, important areas of specialization in which physicians must demonstrate compliance with rigorous training and standards in order to be certified.

9. The purpose of certification by the ABP is to provide assurance to the public and the medical profession that a certified pediatrician has successfully completed an accredited

educational program and an evaluation, including an examination, and possesses the knowledge, skills and experience requisite to the provision of high quality care in pediatrics or a subspecialty thereof. Certification in a so-called “subspecialty” area is equally as valid as certification in General Pediatrics.

10. Consistent with its purposes, the ABP has a strong interest in promoting the recognition of each of its sub-specialties as distinct and unique areas in which pediatricians receive specialized and extensive training and undergo rigorous testing in order to become certified. Although pediatricians understand that children are not simply small adults, nearly all of the medical specialties that categorize physicians that treat adults apply equally to pediatricians. For example, physicians who are certified in the pediatric specialty of Pulmonology specialize in the diagnosis and treatment of lung disease in children. Physicians who are certified in the pediatric specialty of Critical Care Medicine specialize in the treatment of critically ill children whose conditions require very intensive medical treatment. Because of the distinct and highly specialized nature of these areas, the ABP has recognized them as distinct specialties within pediatrics in which physicians may become certified.

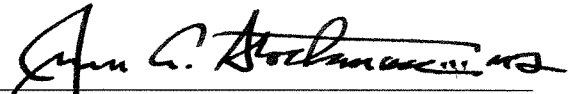
11. Although these specialties are generally referred to as “subspecialties,” they are nonetheless distinct “specialties” in which physicians may be certified by the ABP. Just as the ABP has set specific and rigorous standards for certification in General Pediatrics, ABP has established specific and rigorous standards for certification in each of the so-called “subspecialty” areas, and has determined that each of these areas is distinct enough to merit special recognition of those with a particular expertise and experience level in those areas.

12. The ABP does not determine whether physicians may practice in any particular specialty or subspecialty area, nor does the ABP mandate who may be qualified as an “expert”

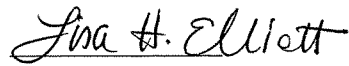
for litigation or any other purpose. The ABP does, however, determine who may be “board certified” in General Pediatrics and the each of the other previously identified areas of pediatric specialization.

13. To the extent that M.C.L. § 600.2169(1)(b) requires an expert witness to be “board certified” in the same specialty as the physician against whom he seeks to testify, such board certification should include certification in any relevant “subspecialty” area. According to the ABP, board certification in the “specialty” of General Pediatrics does not connote the same level of specialization in the specific pediatric specialties recognized by the ABP and referred to as “subspecialties.” By way of illustration, physicians seeking certification in the pediatric specialty of Pulmonology must demonstrate that they have received extensive training and have achieved a high level of expertise in the diagnosis and treatment of lung disease in children. Physicians seeking to become certified in the pediatric specialty of Critical Care Medicine must show that their training and expertise in the treatment of critically ill children whose conditions require very intensive medical treatment meet the rigorous standards set by the ABP. In each case, certification represents the achievement of a certain level of expertise and experience in the distinct area or areas of specialty at issue, above and beyond that required of those certified in General Pediatrics.

14. Therefore, the ABP believes that the term “specialty” as used in M.C.L. § 600.2169 should be interpreted to require board certification in the pediatric subspecialty at issue in any lawsuit.

  
James A. Stockman III, M.D.

Sworn to before me this the 5<sup>th</sup> day of October, 2005.



Notary Public

My commission Expires: 4/11/2009

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**AFFIDAVIT OF STEPHEN H. MILLER, M.D., M.P.H.**

1. My name is Stephen H. Miller, M.D., M.P.H. I am over twenty-one years of age  
and I have personal knowledge of the facts set forth herein.

2. I am currently the President of the American Board of Medical Specialties  
("ABMS"), and was previously the Executive Vice President of the ABMS for many years.



3. The ABMS is a not-for-profit organization comprising 24 medical specialty boards. Established in 1933, the ABMS serves to coordinate the activities of its Member Boards and to provide information to the public, the government, the profession and its Members concerning issues involving specialization and certification in medicine. The mission of the ABMS is to maintain and improve the quality of medical care in the United States by assisting the Member Boards in their efforts to develop and utilize professional and educational standards for the evaluation and certification of physician specialists.

4. The American Board of Pediatrics (“ABP”) is one of the 24 medical specialty boards recognized by the ABMS. The ABP determines whether a pediatrician is “board certified.” Because the area of medicine referred to as General Pediatrics is very broad, and because the medical treatment of children requires nearly all of the same specialty areas as the medical treatment of adults, the ABP recognizes several specialty areas within pediatrics, which are sometimes referred to as “subspecialties.” These pediatric subspecialties include Adolescent Medicine, Cardiology, Critical Care Medicine, Developmental-Behavioral Pediatrics, Emergency Medicine, Endocrinology, Gastroenterology, Hematology-Oncology, Infectious Diseases, Neonatal-Perinatal Medicine, Nephrology, Pulmonology, and Rheumatology. The ABP also awards certificates in conjunction with other specialty boards in the areas of Clinical Laboratory Immunology, Medical Toxicology, Neurodevelopmental Disabilities, and Sports Medicine.

5. The purpose of certification is to give assurance to the public that physicians certified in a specialty have the education and training needed by a specialist in that field of medicine and that they have demonstrated that they possess the necessary knowledge and skills of the specialty.

6. Certification by an ABMS Member Board is voluntary, but today most physicians seek to be certified. Nearly 90% of all physicians are certified by an ABMS Member Board.

7. While a physician need not be certified in a particular subspecialty in order to practice in that area, physicians who tend to focus their practice in a particular subspecialty and develop an expertise in that area often seek certification in that subspecialty. Certification in a subspecialty therefore connotes the achievement of a certain level of expertise and experience in that subspecialty.

8. Although these specialties are generally referred to as “subspecialties,” they are nonetheless separate and distinct “specialties. The ABMS has a policy that addresses the significance of certification in specialty and subspecialty fields. That policy does not pertain to the qualifications required of expert witnesses in litigation. However, that policy does recognize that certification in a subspecialty connotes a certain level of expertise and experience beyond that required of physicians with a more general certification:

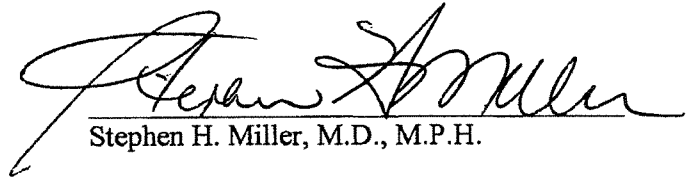
Specialty certification in a subspecialty field is of significance for physicians preparing for careers in teaching, research, or practice restricted to that field. Such special certification is a recognition of exceptional expertise and experience and has not been created to justify a differential fee schedule or to confer other professional advantages over other diplomates not so certified.

*(The Significance of Certification in Medical Specialties: A Policy Statement, Adopted by the ABMS Assembly 9/18/75; Revised 9/23/93).* Thus, while ABMS has no policy regarding the qualifications required of physicians who seek to testify as experts in litigation, the ABMS does recognize that subspecialties, like general specialties, are distinct and separate specialty areas in which physicians may be certified if they achieve a certain level of expertise and experience.

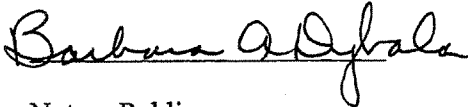
9. Certification in so-called “subspecialties” is important and distinct from certification in “general” specialty areas. That is, each of the member boards of ABMS –

including the ABP – sets rigorous requirements for certification in both “specialties” and “subspecialties,” all of which are reviewed and approved by ABMS. Subspecialties are not considered “lesser” areas of certification; rather, they are specialties in and of themselves for purposes of board certification.

10. Therefore, the ABMS believes that the term “specialty” as used in M.C.L. § 600.2169 should be interpreted to require board certification in the pediatric subspecialty at issue in any lawsuit.

  
Stephen H. Miller, M.D., M.P.H.

Sworn to before me this the 10 day of October, 2005.



Notary Public

